



PUBLIC NOTICE

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DIRECT BROADCAST SATELLITE SERVICE LICENSES AUCTION

Status of FCC Form 175 Applications to Participate in the Auction

Report No. AUC-04-52-G (Auction No. 52)

The Federal Communications Commission (“Commission”) has received three FCC Form 175 applications to participate in Auction No. 52 scheduled to begin on Wednesday, July 14, 2004, for three licenses to use the Direct Broadcast Satellite (“DBS”) service allocation in the 12.2-12.7 GHz band. The applications have been reviewed for completeness and compliance with the Commission’s rules, and have been classified into the categories listed below.

Application Categories:

ACCEPTED FOR FILING..... 1 Application

INCOMPLETE..... 2 Applications

Accepted: Applications accepted for filing are listed alphabetically in Attachment A. **These applicants will become qualified bidders upon receipt of the required upfront payment due by 6:00 p.m. ET on June 18, 2004.**¹ With respect to the FCC Form 175 applications, these applicants need take no further action except as may be necessary to maintain the accuracy of their applications.² Attachment A also includes FCC account numbers that were automatically created by the FCC software system for each applicant and indicates the licenses selected by each applicant on its FCC Form 175 filing.

Incomplete: Applications found to be incomplete are listed alphabetically in Attachment B. Applicants whose FCC Form 175 applications have been deemed incomplete will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. **These applicants may become qualified bidders only if they: (1) make the required upfront payments by 6:00 p.m. ET on Friday, June 18, 2004; and (2) resubmit their applications by 6:00 p.m. ET on Friday, June**

¹ See 47 C.F.R. § 1.2106.

² See 47 C.F.R. § 1.65. See also Auction of Direct Broadcast Satellite Service Licenses Rescheduled for July 14, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures, Public Notice, 18 FCC Rcd 2018 (2004) (“Auction No. 52 Procedures Public Notice”).

18, 2004, to correct the deficiencies indicated. Applicants also must maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules.³ Applicants are advised that Attachment B includes FCC account numbers that were automatically created by the FCC software system for each applicant.

The filing window for resubmitting FCC Form 175 applications is now open. Corrected applications must be filed no later than **6:00 p.m. ET on Friday, June 18, 2004**. This will be the only opportunity to cure FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will be dismissed.

UPFRONT PAYMENT DEADLINE

Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 52 are due in the proper account at Mellon Bank, Pittsburgh, Pennsylvania, **no later than 6:00 p.m. ET on Friday, June 18, 2004**. **In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline.**⁴ **Payments must be made by wire transfer in accordance with the instructions provided in the *Auction No. 52 Procedures Public Notice*.**⁵ No other payment method is acceptable for this auction. Applicants are reminded to use their FCC Registration Number ("FRN"), not their FCC Account Numbers, on the FCC Form 159. Applicants must fax a completed FCC Form 159 (revised February 2003) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day).

Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments before the Commission will review their submitted applications. If no upfront payment is made or the application remains incomplete following its resubmission, the application will be dismissed. If the applicant has provided its FRN and wire transfer instructions from the payer of record, any upfront payment made prior to dismissal will be refunded in a timely manner upon request.

Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account. We remind applicants that to avoid untimely upfront payments they should discuss arrangements (including bank closing schedules) with their banker several days before making the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Detailed information regarding upfront payments including additional requirements for "former defaulters" can be found in the *Auction No. 52 Procedures Public Notice* under Section II.C. and Section III.D.3.⁶

Note: Applicants are reminded to submit the same FRN with all future payments.

OTHER IMPORTANT INFORMATION

³ See 47 C.F.R. § 1.65.

⁴ Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, 18 FCC Rcd 11552 (2003).

⁵ See *Auction No. 52 Procedures Public Notice*, 18 FCC Rcd at 2035.

⁶ *Id.* at 2031-2032, 2061.

Qualified Bidders: Approximately two weeks after the upfront payment deadline, following Commission review of resubmitted FCC Form 175 applications, and correlation of payments and applications, a public notice listing all applicants qualified to bid in the auction will be released. The same public notice will also include instructions for participating in the mock auction and a bidding schedule for the mock auction and the first day of the auction.

Due Diligence: Potential bidders are reminded that they must operate in accordance with Appendices 30 and 30A of the ITU Radio Regulations and Part 25 of the Commission's rules.⁷ In addition, DBS licensees at the same orbit location may be required to coordinate among themselves to arrive at a mutually acceptable solution to any potential or existing interference between their operations.⁸ We therefore caution potential bidders in formulating their bidding strategies to investigate and consider the impact on the availability of spectrum in Auction No. 52.

Potential bidders also should be aware that there are matters pending with the Commission that could affect the licenses scheduled to be offered in Auction No. 52. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 52, may be commenced, or may be pending, or may be subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 52. In addition, although the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

Potential bidders may obtain information about channels and orbit locations available in Auction No. 52 on the Internet through the International Bureau filing system ("IBFS") at <http://www.fcc.gov/ib/>. This application allows the user to search for current authorizations by call signs, current authorizations by licensee, current authorizations by file numbers, and a pending applications list. Detailed instructions on using the IBFS are available online at http://gullfoss2.fcc.gov/prod/ib/forms/getting_started.htm or by going directly to the Search Tool at <http://svartifoss2.fcc.gov/prod/ib/forms/index.html>. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to research the ITU Space Network List and other relevant ITU databases.⁹

Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 52.

Prohibition of Collusion: Applicants are reminded that Section 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).¹⁰ Because all

⁷ See ITU Radio Regulations, Appendices 30 and 30A, and 47 C.F.R. Part 25.

⁸ Section 2 of Annex 1 to Appendix 30.

⁹ See the Region 2 BSS and feeder-link Plans, contained in Article 10 of Appendix 30 and Article 9 of Appendix 30A of the ITU Radio Regulations, Edition of 2000. The web address for ITU Filings (ITU database) is <http://www.itu.int/sns/specquery.html>; information on accessing a "Ties Account" (required to access ITU database) can be found at <http://www.itu.int/TIES/>.

¹⁰ 47 C.F.R. § 1.2105(a)(2)(viii); 47 C.F.R. § 1.2105(c)(1). See also *Part 1 Seventh Report and Order*, 16 FCC Rcd

three licenses available in Auction No. 52 have overlapping service areas, this prohibition will apply to all applicants. Thus, all applicants (unless they have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii)) must affirmatively avoid all discussions with or disclosures to each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategies.¹¹ For Auction No. 52, this prohibition became effective at the short-form application filing deadline on Friday, May 21, 2004, and will end on the post-auction down payment deadline, which will be announced in a future public notice.¹² For purposes of this prohibition, Section 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.¹³ If parties had agreed in principle on all material terms of a bidding agreement(s), those parties must have been identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with any other applicants.¹⁴

The Bureau has encouraged applicants not to use the same individual as an authorized bidder.¹⁵ A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should take precautionary steps to prevent communication between authorized bidders.¹⁶

In addition, Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.¹⁷ Thus, Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the

17546 (2001); *Part I Fifth Report and Order*, 15 FCC Rcd at 15297-98, ¶¶ 7-8.

¹¹ See Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E, and F Block Bidders, *Public Notice*, DA 96-1460, 15 FCC Rcd 6196 (1996).

¹² 47 C.F.R. § 1.2105(c)(1).

¹³ 47 C.F.R. § 1.2105(c)(7)(i).

¹⁴ See "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, 11 FCC Rcd 9645 (1995).

¹⁵ See *Auction No. 52 Procedures Public Notice* at 2024-2025.

¹⁶ See *In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A*, *Memorandum Opinion and Order*, 13 FCC Rcd. 11973, 11977, ¶ 11 (1998) ("*Nevada Wireless*").

¹⁷ 47 C.F.R. § 1.65.

communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.¹⁸

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.¹⁹ In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.²⁰

Ex Parte Rule: Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule found in Section 1.1208 of the Commission's rules.²¹

Mock Auction: All applicants found to be qualified bidders will be eligible to participate in a mock auction on Friday, July 9, 2004. We encourage all qualified bidders to take advantage of this mock auction to become familiar with the FCC Automated Auction System. In the *Qualified Bidders Public Notice*, the Bureau will announce the bidding schedule for the mock auction and give details about participation. The mock auction will be conducted over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network.

Electronic Bidding: Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. Applicants should specify their bidding preference on the FCC Form 175.

Bidders can access the FCC Automated Auction System over the Internet. Access to the system via the Internet requires, at a minimum, the following hardware and software:

- CPU: Pentium 133 or above
- RAM: 32 MB (64 MB recommended)
- Monitor: VGA or above
- Mouse or other pointing device
- Operating System: Microsoft® Windows™ 95™, 98™, 2000™, ME™, NT™, XP™
- Web Browser, either of the following:
 - ◆ Microsoft® Internet Explorer 4.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.3.1_08 installed.
 - ◆ Netscape® Communicator™ 4.0 or higher, with Java Plug-In Version 1.3.1_08.

¹⁸ 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555, ¶ 17.

¹⁹ *See* 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

²⁰ 47 C.F.R. § 1.2109(d).

²¹ 47 C.F.R. § 1.1208; *See* “Commission Announces that Mutually Exclusive ‘Short-Form’ Applications (Form 175) to Participate in Competitive Bidding Process (‘Auctions’) Are Treated as Exempt for Ex Parte Purposes,” *Public Notice*, 9 FCC Rcd 6760 (1994).

Java Plug-In Version 1.3.1_08 is available for downloading at
<http://java.sun.com/products/archive/index.html>

As a contingency plan, bidders can also access the FCC Automated Auction System by dialing in to the FCC's Wide Area Network. Bidders dialing in to the FCC's Wide Area Network will need:

- Modem: 28.8 Kbps Hayes© compatible modem or faster (56 Kbps recommended)
- Point-to-Point Protocol (PPP) Dialer: Use the Dial-Up Networking feature included with the operating system

Long-Form Applications: All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.²²

Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.²³ Each applicant must also certify that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.²⁴ Each FCC Form 175 application must also contain an attached statement made under penalty of perjury indicating whether the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, have ever been in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.²⁵ Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

CONTACT INFORMATION

For questions about payment or instructions for wiring upfront payments, contact Gail Glasser, Auctions Accounting Group, at (202) 418-0578.

For specific questions about an applicant's incomplete status, the applicant should contact the staff reviewer identified in the correspondence sent to the applicant by overnight mail.

²² See 47 C.F.R. § 1.2112(b)(2).

²³ 47 C.F.R. § 1.2105(a)(2)(v).

²⁴ 47 C.F.R. § 1.2105(a)(2)(x); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 at 15317, ¶ 42 (2000) (“*Order on Reconsideration of the Part 1 Third Report and Order*”).

²⁵ 47 C.F.R. § 1.2105(a)(2)(xi); *Order on Reconsideration of the Part 1 Third Report and Order*, 15 FCC Rcd at 15317, n. 142.

For technical assistance with using the FCC Automated Auction System, contact the FCC Technical Support Hotline at (202) 414-1250 (V) or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday from 8:00 a.m. to 6:00 p.m. ET. *All calls to the FCC Technical Support Hotline are recorded.*

For additional information, contact the Auctions & Spectrum Access Division: Brian Carter (regarding legal questions) at (202) 418-0660; Jeff Crooks (regarding bidding and auction procedures) at (202) 418-0660; or Lisa Stover (regarding bidding and general filing status) at (717) 338-2888.

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